No. 3454

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

HARRY NUDELMAN,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court for the District of Oregon.

No._____

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Names and Addresses of Attorneys of Record.

MR. JOHN MANNING,
Fenton Building, Portland, Oregon.
MR. ROSCOE C. NELSON,
Yeon Building, Portland, Oregon.
For the Plaintiff in Error.
MR. LESTER W. HUMPHREYS,
United States Attorney.
MR. JOHN C. VEATCH,
Assistant United States Attorney, Portland, Oregon.
For the Defendant in Error.

Citation on Writ of Error.

United States of America,
District of Oregon,—ss.

To the United States of America, and to B. H. GOLDSTEIN, United States Attorney for the District of Oregon, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Harry Nudelman is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 5th day of December, in the year of our Lord one thousand nine hundred and nineteen.

CHAS. E. WOLVERTON,
Judge.

Due service of the within citation accepted this 5th day of December, 1919.

JOHN C. VEATCH,
Asst. U. S. Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed Dec. 5, 1919. G. H. Marsh, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

HARRY NUDELMAN,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error.

The United States of America,—ss.
The President of the United States of America, to the Judges of the District Court of the United States for the District of Oregon, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable

CHARLES E. WOLVERTON, one of you, between the United States of America, plaintiff and defendant in error, and Harry Nudelman, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 5th day of December, 1919.

[Seal] G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

I hereby certify that the foregoing writ of error was duly served upon the District Court of the United States for the District of Oregon by filing with me, as the Clerk of said Court, a duly certified copy thereof on this 5th day of December, 1919.

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.

[Endorsed]: Filed Dec. 5, 1919. G. H. Marsh, Clerk United States District Court, District of Oregon.

BE IT REMEMBERED, that on the first day of March, 1919, there was filed in the United States District Court for the District of Oregon an Indictment, in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
vs.
HARRY NUDELMAN, Defendant.

Indictment for Violation of Act of February 13, 1913.

United States of America,
District of Oregon,—ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn, and charged to inquire within and for said

District, upon their oaths and affirmations, do find, charge, allege and present:

COUNT ONE.

That on, to-wit: the 2d day of October, 1918, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did wilfully, knowingly, unlawfully and feloniously steal, carry away, and conceal, with the intent on the part of him, the said defendant, to convert to his, the said defendant's, own use, certain goods and chattels, to-wit:

Fifty (50) 32" x 3½" rubber inner tubes for automobile tires;

Two (2) 33" x 4½" rubber inner tubes for automobile tires;

and Twenty (20) 34" x 4" rubber inner tubes for automobile tires,

from a railroad car, to-wit: car initialed and numbered G. T. 10457, and then and there, at said time and place, being in the freight yards of the Oregon-Washington Railroad & Navigation Company, a common carrier, in Portland, aforesaid, said goods and chattels, above particularly described, then and there, at said time and place, being a part of an interstate shipment of freight, to-wit: a shipment of freight from Morgan & Wright Factory, at Detroit, Michigan, to the United States Rubber Co., at number 24-26 North Fifth Street, Portland, Oregon,

over the lines and routes of said Oregon-Washington Railroad & Navigation Company, and connecting carriers to the Grand Jurors unknown, and then and there at said time and place, being in the custody and control of said Oregon-Washington Railroad & Navigation Company; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT TWO.

That on, to-wit: the 11th day of January, 1919, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did knowingly, wilfully, unlawfully and feloniously have in his, the said defendant's, possession certain goods and chattels, to-wit:

Nine (9) 34" x 4" rubber inner tubes for automobile tires;

One (1) 32" x 4" rubber inner tubes for automobile tires; and

Two (2) 33" x 4½" rubber inner tubes for automobile tires,

said defendant, at said time and place, knowing said goods and chattels to have been stolen, and said goods and chattels, at said time and place, be-

ing a part of an interstate shipment of freight, to-wit: a shipment from Morgan & Wright Co., Detroit, Michigan, to United States Rubber Co., at number 24-26 North Fifth Street, Portland, Oregon, over the lines and routes of the Oregon-Washington Railroad & Navigation Company, a common carrier, and other carriers to the Grand Jurors unknown; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT THREE.

That on, to-wit: the 25th day of January, 1919, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did knowingly, wilfully, unlawfully, and feloniously have in his, the said defendant's, possession certain goods and chattels, to-wit:

Ten (10) 32" x 3½" rubber inner tubes for automobile tires; said defendant at said time and place, knowing said goods and chattels to have been stolen, and said goods and chattels, at said time and place, being a part of an interstate shipment of freight, to-wit: a shipment from Morgan & Wright Co., Detroit, Michigan, to United States

Rubber Co., at numbers 24-26 North Fifth Street, Portland, Oregon, over the lines and routes of the Oregon-Washington Railroad & Navigation Company, a common carrier, and other carriers to the Grand Jurors unknown; contrary to the form and statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FOUR.

That on, to-wit: the 6th day of January, 1919, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did knowingly, wilfully, unlawfully, and feloniously have in his, the said defendant's, possession certain goods and chattels, to-wit:

Twelve (12) 34" x 4" rubber inner tubes for automobile tires, said defendant, at said time and place, knowing said goods and chattels to have been stolen, and said goods and chattels, at said time and place, being a part of an interstate shipment of freight, to-wit: a shipment from Morgan & Wright Co., Detroit, Michigan, to United States Rubber Co., at numbers 24-26 North Fifth Street, Portland, Oregon, over the lines and routes of the Oregon-

Washington Railroad and Navigation Company, a common carrier, and other carriers to the Grand Jurors unknown; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FIVE.

That on, to-wit: the 1st day of February, 1919, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did knowingly, wilfully, unlawfully and feloniously have in his, the said defendant's, possession certain goods and chattels, to-wit:

Nineteen (19) 32" x 3½" rubber inner tubes for automobile tires, said defendant, at said time and place, knowing said goods and chattels to have been stolen, and said goods and chattels, at said time and place, being a part of an interstate shipment of freight, to-wit: a shipment from Morgan & Wright Co., Detroit, Michigan, to United States Rubber Co., at numbers 24-26 North Fifth Street, Portland, Oregon, over the lines and routes of the Oregon-Washington Railroad & Navigation Company, a common carrier, and other carriers to the Grand

Jurors unknown; contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT SIX.

That on, to-wit: the 2d day of February, 1919, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, Harry Nudelman, the defendant above named, did knowingly, wilfully, unlawfully, and feloniously have in his, the said defendant's, possession certain goods and chattels, to-wit:

Five (5) 32" x 3½" rubber inner tubes for automobile tires, said defendant, at said time and place, knowing said goods and chattels to have been stolen, and said goods and chattels, at said time and place, being a part of an interstate shipment of freight, to-wit: a shipment from Morgan & Wright Co., Detroit, Michigan, to United States Rubber Co., at numbers 24-26 North Fifth Street, Portland, Oregon, over the lines and routes of the Oregon-Washington Railroad & Navigation Company, a common carrier, and other carriers to the Grand Jurors unknown; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 1st day of March, 1919.

A TRUE BILL.

GRAHAM GLASS,
Foreman, United States Grand Jury.
JOHN C. VEATCH,
Assistant United States Attorney.

Indorsed:

A True Bill—Graham Glass, foreman Grand Jury. Filed in open court, March 1, 1919. G. H. Marsh, Clerk.

AND AFTERWARDS, towit, on Tuesday, the 8th day of April, 1919, the same being the 32d JUDICIAL day of the Regular March term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

RECORD OF ARRAIGNMENT AND PLEA.

In the District Court of the United States for the District of Oregon.

No. 8334.

April 8, 1919.

THE UNITED STATES OF AMERICA

vs.

HARRY NUDELMAN, Defendant.

Indictment Violation Act. Feb. 13, 1913.

Now on this day comes the plaintiff by Mr. John

C. Veatch, Assistant United States Attorney, and the defendant above named in his own proper person, and by Mr. Roscoe C. Nelson, of counsel. whereupon said defendant being duly arraigned upon the indictment herein for plea thereto says he is not guilty.

AND AFTERWARDS, to-wit, on Monday, the 9th day of June, 1919, the same being the 84th JUDICIAL day of the Regular March term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

RECORD OF EMPANELLING JURY.

No. 8334.

June 9, 1919.

UNITED STATES OF AMERICA

vs.

HARRY NUDELMAN, Defendant.

Now on this day come plaintiff, by Mr. J. C. Veatch, Assistant United States Attorney, and by Mr. Roscoe C. Nelson and Mr. Robert F. Maguire of counsel. Whereupon this being the day set for trial of this cause now come the following named jurors to try the issues joined, viz.: Charles A. McKee, A. L. Butler, Edward W. Jones, C. Hunt Lewis, William L. Nash, J. G. Iddings, W. J. Fullerton, Charles Powers, Adolph A. Dekum, William E.

Estes, Dan L. Erdman and J. D. Allen; twelve good and lawful men of the District who, being accepted by both parties and being duly empanelled and sworn, proceed to hear the evidence deduced.

AND AFTERWARDS, to-wit, on Wednesday, the 11th day of June, 1919, the same being the 86th JUDICIAL day of the regular March term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

RECORD OF VERDICT.

No. 8334.

June 11, 1919.

UNITED STATES OF AMERICA

vs.

HARRY NUDELMAN, Defendant.

Verdict.

————And the jury returns to the Court the following verdict (defendant and respective counsel for the parties being present): "We, the jury duly empaneled to try the above entitled cause, do find the defendant guilty as charged in Count One of the Indictment, and guilty as charged in Count Two of the Indictment, and guilty as charged in Count Three of the Indictment, and guilty as charged in Count Four of the Indictment, and guilty as charged in Count Five of the Indictment, and guilty as charged in Count Six of the Indictment.

Dated at Portland, Oregon, this 11th day of June, 1919.

J. G. IDDINGS,
Foreman."

which verdict is received by the Court and ordered filed.

AND AFTERWARDS, to-wit, on Thursday, the 31st day of July, 1919, the same being the 22nd JUDICIAL day of the regular July term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

RECORD OF SENTENCE.

No. 8334.

July 31, 1919.

UNITED STATES OF AMERICA

vs.

HARRY NUDELMAN, Defendant.

Sentence.

Now at this day comes plaintiff by John C. Veatch, Assistant United States Attorney, and defendant Harry Nudelman in his own proper person and by Roscoe C. Nelson of counsel. Whereupon this being the day set for the sentence of said defendant upon the verdict herein.

It is adjudged that the said defendant be imprisoned in the United States Penitentiary at Mc-

Neil's Island, Washington, for the term of thirteen months, and that he stand committed until his sentence be performed or until he be discharged according to law.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

Petition for Writ of Error.

To the Honorable CHARLES E. WOLVERTON, Judge of the above entitled Court:

And now comes Harry Nudelman, the defendant herein, and by his attorneys, Roscoe C. Nelson and John Manning, respectfully shows that on the 11th day of June, 1919 a jury duly empaneled herein found your petitioner guilty of the violation of the Act of Congress approved February 13th, 1913 (37 Stat. L. 670), upon which said verdict sentence was passed and final judgment entered against your petitioner on the 31st day of July, 1919.

Your petitioner feeling himself aggrieved by said verdict and judgment in which judgment and proceedings had prior thereto certain errors were committed to the prejudice of this defendant, all of which will more fully appear from the bill of ex-

ceptions and the assignment of errors filed with this petition, does herewith petition the Honorable Court for an order allowing him to prosecute a writ of errors to the United States Circuit Court of Appeals for the Ninth Circuit under the rules and laws of the United States in such case made and provided.

WHEREFORE, this defendant prays that a Writ of Error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of and that an order be made approving the bond of your petitioner and staying all further proceedings until the determination of such Writ of Error by said Circuit Court of Appeals and that a transcript of the records, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth District.

HARRY NUDELMAN,
Defendant.

ROSCOE C. NELSON,
JOHN MANNING,
Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the foregoing petition

is hereby accepted at the City of Portland this 5th day of December, 1919.

JOHN C. VEATCH,
Asst. United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed Dec. 5, 1919. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defenadnt.

Assignment of Errors.

Harry Nudelman, the defendant in the above entitled action and plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a Writ of Error from this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence made and entered in said cause against said plaintiff in error, and petitioner herein, now makes and files with the said petition the following assignment of errors herein upon which he will rely for a reversal of said judgment and sentence upon the said writ, and which said errors, and each and every of them, are to the great

detriment, injury and prejudice of the said defendant and in violation of the rights conferred upon him by law; and he says that in the record and proceedings in the above entitled cause upon the hearing and determination thereof in the District Court of the United States for the District of Oregon there are manifest errors in this, to-wit:

I.

That the Court erred in over-ruling the motion of the defendant for an order of the Court requiring the United States to elect whether or not they would prosecute the defendant for the theft of the goods alleged in the indictment to have been stolen, or would prosecute him for having said goods in his possession, knowing them to have been stolen.

II.

That the Court erred in admitting, over the objection of defendant, the testimony of F. H. Drake concerning his relations with another witness named Hyman Cohen.

III.

That the Court erred in admitting in evidence, over the objection of defendant, the testimony of W. J. Roope, relative to the employees of the United States Rubber Company being prohibited from doing a jobbing business of goods handled by the said company.

IV.

Upon the conclusion of the testimony the defendant again moved the Court to require the United States to elect whether they would proceed against the defendant upon Count One of the indictment, charging him with theft of the goods mentioned herein, or whether they would proceed against him upon the count of the indictment charging him with receiving said goods, knowing them to be stolen, it being conceded by the United States that the goods alleged to have been stolen in Count One and the goods alleged in the other counts to have been in the possession of the defendant, with knowledge that they had been stolen, are one and the same. The Court erred in over-ruling said motion.

V.

That the Court erred in over-ruling the motion of the defendant to dismiss the indictment against the defendant upon the following counts:

As to Count One, that the said count does not state facts sufficient to constitute a crime, and that it does not describe or name the owner, bailee or custodian of the goods.

As to Count Two: that Count Two does not state facts sufficient to constitute a crime, in that it does not allege that the goods in question were, when stolen, in interstate commerce, and in that it

does not allege that they were stolen from any railroad car, station house, warehouse, platform, depot, steamboat or vessel of any common carrier; and in that it does not describe or name the owner, bailee or custodian of the goods sufficiently to identify them.

As to Counts Three, Four, Five and Six, the same grounds and reasons are urged as are urged as to Count Two.

VI.

That the Court erred in refusing the request of the defendant to instruct the jury to find the defendant not guilty as to Count One of the indictment, for the reason that there is a fatal variance between the allegations of the indictment and the proof, in that it appears from the evidence that the goods alleged in the indictment to have been stolen from G. T. Car 10457 were not stolen from that car at all, but were removed from that car and placed in the freight shed by employees of the United States Railroad Administration. And it further appears from the evidence that it was not stolen from any railroad car, station house, warehouse, platform, station, depot or freight house in the freight yards of the Oregon-Washington Railroad & Navigation Company, for the reason that it appears from the testimony that the Oregon-Washington Railroad & Navigation Company, at the time the goods were alleged to have been stolen,

was not a common carrier, and that the goods were not being transported over the lines and routes of such company, were not in the custody and control of the company, but were in the freight yards of the United States Railroad Administration, and were transported over the lines and routes of the United States Railroad Administration, and were in the custody and control of the said Railroad Administration.

VII.

That the Court erred in refusing the request of the defendant that the Court instruct the jury that there had been a failure to identify the tubes offerred and referred in evidence as a part of the shipment of tubes, concerning which there had also been testimony.

VIII.

That the Court erred in refusing to instruct the jury, as requested by defendant, that there had been no showing in evidence that the case was stolen, and that the evidence so far revealed is consistent with the position of the defendant that the case which is alleged to have been stolen has subsequently been found by the Railroad Administration.

IX.

That the Court erred in refusing to instruct the

jury, as requested by the defendant, about finding the defendant not guilty as to Counts Three, Four, Five and Six of the indictment, upon the several grounds set forth in the motion of defendant to dismiss the said counts, which motion is hereinbefore particularly set out in Assignment of Error No. V.

X.

That the Court erred in refusing to instruct the jury upon the request of the defendant, that the evidence does not support the allegations of the indictment, and that there is no proof of the defendant's guilt under said indictment or any count thereof.

XI.

That the Court erred in refusing the request of defendant to instruct the jury as follows:

> "If the jury finds from the evidence that the defendant stole, carried away or concealed the goods described in the indictment with intent on his part to convert the same to his own use, and that the goods described in Count One of the Indictment are the same and identical goods described in counts two, three, four, five and six of the indictment, then the jury are instructed to acquit the defendant as to Counts two, three, four, five and six."

XII.

That the Court erred in refusing the request of the defendant to instruct the jury as follows:

"That unless the jury finds from the evidence that the goods described in counts two, three, four, five and six of the indictment are different goods from those described in Count one thereof, then the jury must acquit the defendant as to Counts two, three, four, five and six, provided they find from the evidence that the defendant stole the goods described in Count one."

XIII.

That the Court erred in refusing the request of the defendant to instruct the jury as follows:

"Under the indictment and evidence in this case, the defendant cannot be convicted by the jury of both the crime of stealing the goods and with having them in possession knowing them to be stolen. If the jury finds from the evidence that the defendant stole the goods, then they must acquit the defendant as to the other counts of the indictment."

XIV.

That the Court erred in refusing the request of the defendant to instruct the jury as follows:

"If the jury find from the evidence that the

goods were removed from the freight house by the defendant, and that at such time the defendant was the duly authorized agent and representative of the consignee of the goods, then it is the duty of the jury to acquit the defendant."

XV.

The Court erred in instructing the jury as follows:

"Now, there are five other counts of this indictment. Count two charges the defendant with having in his possession certain goods and chattels, and then describes the goods and chattels. Those goods and chattels are a part of the goods and chattels which are described in the first count. And then it is further alleged by that count that those goods and chattels were a part of and constituted an interstate shipment over the lines of the O. W. R. & N. Company from Detroit to the City of Portland; and it charges the defendant with having those goods in his possession, knowing at the same time that the goods had been stolen from the railroad company or its freight depot while the goods were a part of an interstate shipment."

To which instruction the defendant duly excepted.

XVI.

The Court erred in instructing the jury as follows:

> "The Third Count charges the same thing, but that charge is with reference to another portion of the goods which are described in Count one. And so on with Counts 4, 5 and 6."

To which instruction the defendant duly excepted.

XVII.

The Court erred in instructing the jury as follows:

> "I may say that perhaps the reason why these last counts were so split up was because the goods were found to have been delivered by the defendant, if the testimony so warrants your belief, to different parties, and it came about by the manner in which the goods were handled and disposed of."

To which instruction the defendant duly excepted.

XVIII.

The Court erred in instructing the jury as follows:

> "It is a rule of law that it is permissible, and the prosecutor may join in one indictment a

charge of each offense committed arising out of the same state of facts or series of acts. To make the matter plain, it is often the case that several offenses against the Government may be committed through the doing of the same acts or series of acts, and the Government may indict for all the offenses committed, but each offense must be charged by a separate count, and be separately stated. The principle is well illustrated by the present statute. That statute makes it an offense to steal, take and carry away goods and chattels while in the process of interstate transportation. The same statute makes it also an offense for one to have such goods in his possession knowing them to have been stolen. As a person cannot steal and carry away the goods without having them in his possession, with knowledge of the theft, he may be guilty of both offenses, they arising out of the same series of acts. Now, it was proper for the Government to indict for both offenses but the charge for each offense must be a separate count, and that is what has been done here. While, if the evidence warrants, the defendant may be convicted on two or more of these counts, including the first, but one punishment can be meted out, and that is for the Court and not for the jury. So that while a defendant charged with several offenses arising out of the same acts or series of acts may be convicted of more than one of such offenses, he

can only receive one punishment, which will discharge him of all the offenses."

To which instruction the defendant duly excepted.

XIX.

The Court erred in instructing the jury as follows:

"You may convict upon one or more, or all the counts, or acquit upon one or more, or all the counts. For instance, if you ascertain a reasonable doubt as to whether the defendant stole the property described in Count One, and are convinced that he had the part of such goods described in Count Two, knowing them to have been stolen while in interstate shipment, you should acquit on the first count and convict on the second, or vice versa, if the evidence so convinces you beyond a reasonable doubt. And in this way all the counts will be considered."

To which instruction the defendant duly excepted.

XX.

The Court erred in instructing the jury as follows:

"Now, as to the ingredient of this offense, I can state them to you in a brief way. It con-

sists, in the first place, of stealing, taking away, or carrying away, the property which it is charged the defendant did steal and take and carry away. And further, the property so carried away, must have been taken and carried with the intent on the part of the person taking it to convert the same to his own use. And, second, the party taking the goods must have taken the identical goods which are charged in the indictment. He may have taken part of them, or he may have taken all, but he must have taken some or all of the goods charged in the indictment. He cannot be convicted of taking any other goods than that that was mentioned in the indictment. And he must have taken these goods from a car, or from a warehouse or freight house of the company which has charge of the goods while in transportation, and the goods must have been a part of an interstate shipment.

Goods become a shipment for transportation when they are delivered at a warehouse or freight house and are taken into the possession of the company, and then they continue to be a part of an interstate shipment or of the shipment, while they are being transported from the place where delivered to the place where they are to be turned over to the consignee. Then continue to be a shipment until the goods have been delivered to the consignee. They re-

main in transit yet while the goods are in the warehouse or in the freight house of the shipping company."

To which instruction the defendant duly excepted.

XXI.

The Court erred in instructing the jury as follows:

"As to the second count, the ingredient count is that the defendant must have the goods in his possession, and he must know at the time that the goods had been stolen, and he must know that they were stolen while the goods were in interstate shipment, or being carried from one state into another. And the same rules for determining whether or not the shipment is interstate will apply as I have explained to you formerly."

To which instruction the defendant duly excepted.

XXII.

The Court erred in instructing the jury as follows:

"Now, there is some question made here as to whether the indictment is sufficient in charging that these goods were taken from car No. 10457. The evidence tends to show that the

railroad company itself had taken the goods out of the car and placed them in its freight warehouse, ready for delivery to the consignee. I instruct you, gentlemen of the jury, that it makes no difference whether the goods were in the car at the time they were taken, if they were taken by the defendant, or whether they were in the freight warehouse and not yet delivered to the consignee."

To which instruction the defendant duly excepted.

XXIII.

The Court erred in instructing the jury as follows:

"Another question has been made here, and that is with reference to whether the Oregon-Washington Railroad & Navigation Company was in the operation of its roads while these goods were being transported. The fact is that the Government was at that time in the operation of such railroad lines. It had prior to that time, under the authority of a law of Congress, taken over this line, with a great many others, and was operating the lines for the purposes of the Government. But I instruct you that it makes no difference in this case whether this railroad was being operated by the corporation of the Oregon-Washington Railroad & Navigation Company itself, or was being operated

by the Government. The material thing in the case is, were these goods being transported at the time from the warehouse before delivery to the consignee, then the defendant would be liable if he stole them, if he took them surreptitiously from such warehouse."

To which instruction the defendant duly excepted.

XXIV.

The Court erred in instructing the jury as follows:

"Now, it is claimed on the part of the defendant that he had authority from the United States Rubber Company, which was the consignee of these goods, to obtain the goods from the railroad company and to deliver them at the store of the United States Rubber Company. And in that connection I will say to you that, if the defendant had the authority from the Rubber Company to procure these goods, then it would be, of course, regular for him to go to the warehouse of the company and take the goods in behalf of the Rubber Company, and deliver them to the Rubber Company; but he would have no right to take the goods contrary to the rules of the railroad company. He would have no right or authority by reason of his agency of the Rubber Company, to take these goods away without the consent of the

railroad; and much less would he have any right or authority to steal or carry away the goods surreptitiously, and thereby with intent to convert them to his own use."

To which instruction the defendant duly excepted.

XXV.

The Court erred in instructing the jury as follows:

"If the jury find from the evidence that the goods were removed from the freight house by the defendant, and were not removed surreptitiously and clandestinely or stealthily, and that at such time the defendant was the duly authorized agent and representative of the consignee of the goods, then it would be the duty of the jury to acquit."

To which instruction the defendant duly excepted.

XXVI.

The Court erred in instructing the jury as follows:

"I instruct you that if you believe from the evidence that the defendant, Harry Nudelman, took the case of rubber tubes described in the indictment from the warehouse referred to in the evidence, he must have taken them in one

of the two ways: either as a theft, or as the agent and expressman of the United States Rubber Company. If you believe that he took them as an expressman under his general authority from the United States Rubber Company to receive freight consigned to it, and not surreptitiously, clandestinely, or stealthily, and that thereafter he formed an intent to convert the case to his own use, then I instruct you that you cannot find him guilty under the first count of the indictment for stealing the case, because the offense would not be one against the laws of the United States."

To which instruction the defendant duly excepted.

XXVII.

The Court erred in over-ruling the motion of the defendant for a new trial upon each count of the indictment, which motion upon each count was based upon the following grounds:

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

XXVIII.

The Court erred in over-ruling the defendant's motion for an order arresting judgment, which motion was based upon the following grounds as to each count in the indictment:

(a) That the indictment does not state sufficient facts to constitute a crime.

(b) That it appears affirmatively of record that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

XXIX.

That the Court erred in entering a judgment of conviction and in sentencing the defendant to confinement in the United States Penitentiary at McNeil's Island, Washington, for a period of 13 months.

WHEREFORE, on account of the errors above assigned, the said judgment ought to have been given for the said defendant and against the United States of America, now the defendant prays that the judgment of said Court be reversed and the sentence herein imposed upon him be set aside, and that this cause be remanded to the said District Court and such directions be given that the above errors may be corrected and law and justice done in the matter.

Dated this 5th day of December, A. D. 1919.

ROSCOE C. NELSON,
JOHN MANNING,
Attorneys for Defendant, Harry Nudelman.

Service acknowledged Dec. 5, 1919.

JOHN C. VEATCH,
Assistant United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed Dec. 5, 1919. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

Order Allowing Writ of Error.

Now, at this day, comes the defendant in the above entitled cause by Mr. John Manning, of counsel, and presents to the Court his petition praying for the allowance of a Writ of Error to be issued out of the United States Circuit Court of Appeals for the Ninth Circuit to review the judgment of this Court entered in said cause, and moves the Court for an order allowing the said petition:

On consideration whereof, IT IS ORDERED that the Writ of Error issue as prayed for in said petition.

It is further ORDERED that all proceedings in the above entitled District Court be stayed,

superseded and suspended until the final disposition of the Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit, upon the defendant filing an undertaking in the sum of Two Thousand Five Hundred ($2,500.00) Dollars to be approved by the Court.

Dated at Portland, Oregon, this 5th day of December, 1919.

CHARLES E. WOLVERTON,
Judge.

[Endorsed]: United States District Court, District of Oregon. Filed Dec. 5, 1919.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, Harry Nudelman, as principal, and Philip Nudelman and Abe Kamusher as sureties, are held and firmly bound unto the United States of America in the penal sum of Two Thousand Five Hundred ($2,500.00) Dollars, for the payment of which,

well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, forever firmly by these presents.

Sealed with our seals and dated and signed this 5th day of December, 1919.

WHEREAS, at the July term, 1919, of the District Court of the United States for the District of Oregon, in a cause therein pending, wherein the United States was plaintiff and the said Harry Nudelman was defendant, a judgment was rendered against the said defendant on the 31st day of July, 1919, wherein and whereby the said defendant was sentenced to be imprisoned in the United States Penitentiary at McNeil's Island, Washington, for a period of thirteen months, and the said defendant has prayed for and obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment and sentence in the aforesaid action, and the citation directing the United States to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days from and after the date of said citation has issued, which citation has been duly served.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Harry Nudelman shall appear either in person or by attorney in the said Circuit Court of Appeals for the Ninth Circuit

on such day or days as may be appointed for the hearing of said cause in said Court, and prosecute his writ of error and abide by the orders made by the said United States Circuit Court of Appeals, and shall surrender himself in execution as said Court may direct, if the judgment and sentence against him shall be affirmed, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 5th day of December, 1919.

HARRY NUDELMAN, (Seal)
Principal.
PHILIP NUDELMAN, (Seal)
Surety.
ABE KAMUSHER, (Seal)
Surety.

United States of America,
District of Oregon,—ss.

We, Philip Nudelman and Abe Kamusher, each being first duly sworn, for himself says: That I am a resident and freeholder in the State of Oregon, and that I am worth the sum of Two Thousand Five Hundred ($2,500.00) Dollars over and above all my just debts and liabilities, and exclusive of property exempt from execution.

PHILIP NUDELMAN,
ABE KAMUSHER.

Subscribed and sworn to before me this 5th day of December, 1919.

G. H. MARSH,
Clerk United States District Court, District of Oregon.

Approved Dec. 5th, 1919.

CHAS. E. WOLVERTON,
United States District Judge.

[Endorsed]: United States District Court, District of Oregon. Filed Dec. 5, 1919. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

Bill of Exceptions.

Be it remembered that on the 9th day of June, 1919, at a stated term of said Court beginning and held in Portland, Oregon, before the Hon. Chas. E. Wolverton, District Judge, presiding, the above entitled cause came on to be heard before said Court and a jury impanelled therein; the United States appearing by Mr. John C. Veatch, Assistant United States Attorney for said district, and the defendant

appearing in person and represented by counsel Mr. Roscoe C. Nelson and Mr. Robert F. Maguire.

Whereupon the following proceedings were had, to-wit:

B. L. MacPhee being called on behalf of the Government and being first duly sworn testified substantially as follows:

Q. What do you do, Mr. MacPhee?

A. I am office manager—

EXCEPTION 1.

Whereupon the following proceedings were had:

MR. MAGUIRE: At this time the defendant moves the Court for an order upon the United States to elect whether or not they will prosecute the defendant for the theft of these goods or for having them in possession knowing them to be stolen, upon the ground and for the reason that a man cannot be guilty of the theft and also be guilty in the same district, with having them in possession. Your Honor is probably familiar with the provisions of this act which provide for three separate offenses. One is the theft, the other is having in possession the goods, knowing them to have been stolen, and the third is a separate offense which is transporting these goods in interstate commerce. The law is well settled and is laid down here in a number of decisions, which I will call to your at-

tention, that a person charged with the theft of goods cannot be guilty also of receiving stolen goods.

Which said motion was overruled by the Court and to over-ruling of that motion the defendant was duly and regularly allowed an exception.

Whereupon the said witness testified substantially as follows:

That he was the office manager of the United States Rubber Company; that the United States Rubber Company had received two invoices from the Morgan Wright factory covering the shipment of fifty 32 x 3½ inner tubes, two 33 x 4½ tubes and twenty 34 x 4 tubes, of the approximate value of $306.00; that the defendant during the month of September, 1918, and October, 1918, was employed by the United States Rubber Company as driver in charge of the cartage of its Portland Branch; that the United States Rubber Company was the only concern in the City of Portland distributing United States Rubber Company inner tubes, but that approximately 100 retail dealers in that city had these tubes for sale at retail and that said tubes were kept in cartons, and that inner tubes were not identified by any number placed thereon; that the defendant was the duly authorized agent of the United States Rubber Company to obtain from all freight and express depots all packages of freight or express which were consigned to the

company, and was authorized to take and receive from the railroad any and all shipments consigned to it which it was his duty to bring to the company's warehouse.

O. R. WILEY was thereupon called as witness on behalf of the Government, and being duly sworn, testified substantially as follows: that the shipments of goods in question described in the indictment were not received by the United States Rubber Company; that inner tubes of the size 32 x 3½ in the month of October, 1918, sold for $4.80; that tubes of the size 33 x 4½ sold for about $8.00; that tubes of the size 34 x 4 sold for about $6.65, and never sold as low as $3.00.

O. H. SIMMONS was called on behalf of the Government and being duly sworn testified substantially as follows; that he was gang checker at the O. W. R. & N. freight house, that he checked freight from the way bill, weighed it and sent it to freight house from the cars; that the shipment in question was unloaded at Portland, Oregon, from the car on the 2nd day of October, 1918, by men under his direction and placed in the O. W. R. & N. warehouse at Portland in a pile; that in the usual course of business the teamsters for the consignee would appear at the freight house, go to the delivery office, get a delivery ticket, back his vehicle into the pile and get a checker to check the boxes out to him; that as a rule the checker and the team-

ster would work together in taking the boxes from the pile and putting them on the vehicle; that the witness at the time he had the goods in question taken from freight car and placed in the warehouse was employed by the United States Railroad Administration, and was paid by them, and that the men who took the goods from the car were also employed by the United States Railroad Administration, and that the goods were brought to him from the car by another employee of the United States Railroad Administration, and that the goods were left by him in the warehouse.

FRANK ELLIOTT was thereupon called on behalf of the Government, and being duly sworn, testified substantially as follows: that he is assistant warehouse foreman at the Portland freight sheds of the O.-W. R. & N. line, and that on the 3rd day of October, 1918, the defendant presented to him a delivery receipt for the piece of goods in question, but the delivery clerk was unable to find the goods and reported it to the witness, who on the 9th day of October asked the defendant whether he had seen the goods and was told that the defendant had not.

JOHN A. COLYER was thereupon called on behalf of the Government, and being duly sworn, testified substantially as follows: that during the month of October, 1918, he was employed by the Railroad Administration and the O. W. R. & N. at the freight house in Portland; that the defendant

on the 2nd day of October, 1918, backed his truck up to the door of the warehouse, which door was marked with the name of the United States Rubber Company, to receive such shipments as were there for that corporation and received two shipments, and the witness took his delivery tickets and passed on.

On cross examination he testified substantially as follows: That the defendant came there practically every day to get shipments for the United States Rubber Company, and was the only person who came down to the freight house for them, and was the man authorized to take and carry away all shipments consigned to such company, and that he, the witness, accepted Nudelman's receipts for all the goods shipped to the United States Rubber Company.

FRANK ELLIOTT being recalled, testified that the goods in question reached Portland in G. T. car 10457 (the car designated in the indictment), but that the goods were not stolen from the car, but were removed from the car by the witness and the men under his direction and placed in the warehouse in the space allotted to the United States Rubber Company.

H. N. FRAZER called on behalf of the Government, being duly sworn, testified substantially as follows: That he is a special officer at the freight house of the O. W. R. & N. Company, that he had

a conversation with the defendant some time during the months of November or December, 1918, concerning this shipment of inner tubes, and the defendant said he knew nothing about it. On cross examination the witness testified that the person getting the freight backed his van up there to one of the doors of the freight house in the vicinity of his freight and he takes the freight that is put there in the pile consigned to his firm and puts it upon his van or truck and signs a receipt for it.

The Government then offered evidence tending to prove that the defendant had taken a box approximately three feet in size from the Portland Transfer & Storage Company and that the defendant had sold inner tubes in cartons of the United States Rubber Company to various garage men and retail tire dealers in the City of Portland of the number and size corresponding the shipments alleged to have been stolen and at a price very materially lower than the price at which these goods were sold by the United States Rubber Company to its retail dealers. Whereupon Hyman Cohen was called on behalf of the Government and testified that on or about December 2nd, 1918, the defendant offered to sell him inner tubes of the kind and character sold by the United States Rubber Company; that the witness said he would see if he could sell them and gave the defendant a check for $162.50; that defendant turned over to him a box approximately three feet square containing 72 inner tubes,

and that defendant got this box from the Portland Transfer Company; that the witness tried to sell the tubes but was unable to do so and defendant returned $162.00 of the money paid him and took back the tubes, but Nudelman told him that these tubes were seconds and he purchased them from the United States Rubber Company; that the witness received a letter from the defendant while he was in Hot Springs, Arkansas, in which the defendant desired him to specify or say that the witness had purchased the goods from a name by the name of I. Davie.

On cross examination he was asked if on his return from Hot Springs, Arkansas, he did not inform the defendant that he had consulted with his attorney, Mr. Drake, the United States Commissioner, and if he had not told the defendant not to worry about it at all that his attorney was going to fix the matter up. This conversation the witness denied, but said he had shown Mr. Drake the letter and was advised by Mr. Drake that if he was an innocent man he did not have to be afraid.

EXCEPTION 2.

F. H. DRAKE was thereupon called on behalf of the Government and being duly sworn, testified as follows: that he is an attorney at law, and United States Commissioner for the District of Oregon; that he had had business relations with Mr. Hyman

Cohen; whereupon he was asked what that relation was, to which question the defendant objected upon the ground that it was entirely irrelevant, and that it was improper and immaterial to put one witness on stand, who testifies to certain things, and then call another witness to say that what the first witness said was so, that it was improper and immaterial to any issue in the case.

Whereupon the Court asked the Assistant United States Attorney to what matter the question referred and was informed by the Assistant United States Attorney as follows:

"On cross examination it was brought out by the defendant that Mr. Cohen, one of the witnesses for the Government here, had consulted an attorney on his arrival in Portland. The inference appeared to be drawn from that that Mr. Cohen was afraid of his own connection with this case. I offer to put Mr. Drake on the stand to show his connection.

COURT: Is that all you want to ask Mr. Drake?

MR. VEATCH: Simply his connection; yes.

COURT: You may answer.

To which ruling of the Court the defendant was duly allowed an exception.

Whereupon the witness answered as follows:

"One was in connection involving an automobile.

Another was in connection with a divorce suit. Relative to this particular matter in question, I recall one Sunday morning Mr. Cohen calling me up and stating that he wanted to see me. I told him if it was urgent, he could come out to my house. Mr. Cohen came out to the house and produced a letter and told about——

COURT: I don't think you could go into that matter. You cannot go into the matter of their conversation, but you can show that Mr. Cohen consulted Mr. Drake.

Q. This was on Sunday then, Mr. Drake, that Mr. Cohen consulted you?

A. On Sunday, yes.

Q. Did you see Mr. Cohen after in regard to this case?

A. He met me the next morning and I took him to your office.

Q. Did you have any further consultation, or any dealings with Mr. Cohen regarding this case?

A. No, sir.

To each of which questions the defendant duly objected upon the grounds heretofore recited in this exception, and which said objections were overruled by the Court, and the defendant allowed an exception to the Court's ruling.

EXCEPTION 3.

W. J. ROOPE was thereupon called as a witness on behalf of the Government and being duly sworn, testified substantially as follows:

That he is the manager of the Portland branch of the United States Rubber Company; that the defendant was not an employee of the United States Rubber Company, but that that it had had him under contract to do all its hauling, outcoming and outgoing.

Whereupon the following question was asked:

"Are any of the employees of the United States Rubber Company, Mr. Roope, permitted to do jobbing business of goods that are handled by the Company?"

To which question the defendant interposed the objection that it was irrelevant and immaterial to this case whether the Company can rule or had a rule; that that fact would not make the defendant guilty under a criminal statute; that the company can make rules and he might break them and that fact would affect his criminality under this case.

This objection was overruled by the Court, and the defendant was allowed an exception to the Court's ruling.

The witness thereupon answering the question, testified: "By no means."

Thereafter the witness testified that the box of inner tubes in question never made an appearance in the United States Rubber Company. On cross-examination the witness testified that it was the duty of the defendant, and he was the sole authorized agent of the United States Rubber Company to obtain shipments of freight for that company arriving in Portland, and that it was his duty to go to the freight yards and warehouses and obtain and procure from the railroads and carriers all goods consigned to the United States Rubber Company; and that the shipment of goods in question went astray during the time of the United States Railroad Administration of the carrier.

Whereupon the Government rested its case.

The defendant called as a witness in his behalf MR. C. E. COCHRAN, who being duly sworn testified substantially as follows: that he is a member of the legal profession and assistant secretary of the Oregon-Washington Railroad and Navigation Company, and assistant corporation counsel, and has held such position since the first day of August, 1918; that ever since the month of July, 1918, the lines of railroad which prior to the war were operated by the Oregon-Washington Railroad and Navigation Company have been operated by the United States Railroad Administration; that the United States Government took the lines over pursuant to the proclamation of the President January 1, 1918; that for a time thereafter they were operated by

the Oregon-Washington Railroad and Navigation Company as agent for the Government until the Director General undertook the operation through agents and officers of his own; that about the month of June, 1918, Mr. O'Brien was appointed federal manager for the Government and resigned his official connection with the corporation; that the Oregon-Washington Railroad and Navigation Company had no control over the operation of the lines, or over the freight cars, freight shipments, warehouses, receipts, or the use of or the freight yards known as the O.-W. R. & N. freight yards in the City of Portland, Oregon, since the first day of June, 1918; that the corporation did not collect any freights for shipments taking place after that time, and that it had no power to divert, control, move or stop any shipment over those lines after the first of June, 1918.

On cross-examination he testified substantially as follows: that the lines of railroad in question during federal control were not known as the Oregon-Washington Railroad & Navigation Company's lines, but in order to distinguish them, as between government operation, and that of the corporation, so far as the Oregon-Washington Railroad and Navigation Company was concerned, the Director General called these lines the O.-W. R. & N. lines, which was a sort of trade name for these lines after the first of June, 1918; that the contracts of freight shipment made after that date were not made with

the Oregon-Washington Railroad and Navigation Company, but that the bills of lading bore the stamp of the United States Railroad Administration, and that the Government adopted a name of its own for each one of these railroads; that the Government was a lessee of the railroad and made a contract with the Oregon-Washington Railroad and Navigation Company in which it agreed to pay a rent for the lines.

On re-direct examination he testified that after the First of June, 1918, if there was a shortage in a freight shipment, or if there was a failure to pay freight or an overcharge for freight, the shipper did not have any dealings with the Oregon-Washington Railroad and Navigation Company but with the United States Railroad Administration, and that the corporation had neither custody nor control over any shipment or the physical instrumentalities of commerce after the 1st of June, 1918, and thereupon there was read in evidence a rubber stamp impression appearing upon the bills of lading, way bills theretofore introduced in evidence showing the shipment of the box of inner tubes in question, as follows:

"The United States Railroad Administration, W. G. McAdoo, Director General of Railroads, Oregon-Washington Railroad and Navigation Lines. The above is to be regarded as substituted for the name of the Oregon-Washington Railroad and Naviga-

tion Company where the same appears in this document."

Whereupon the following proceedings were had:

EXCEPTION 4.

It was conceded by the Assistant United States Attorney that the goods described in Count One of the indictment, and the goods described in Counts two, three, four, five and thix thereof, were one and the same.

Whereupon the defendant rested, and moved the Court to require the United States to elect whether to proceed against the defendant upon Count One of the indictment charging him with the theft of the goods, or to proceed against him upon the counts of the indictment charging him with receiving the goods, knowing them to have been stolen, upon the grounds and for the reason that one who steals goods cannot be convicted of the theft of the goods and with having received the same goods knowing them to have been stolen in that the evidence in this cause shows that the goods which it is claimed the defendant stole are the identical goods which it is claimed the defendant received, knowing them to have been stolen.

Thereupon the Court having heard argument of counsel, over-ruled the motion of the defendant, to which action of the Court the defendant duly requested and was allowed an exception.

EXCEPTION 5.

Thereupon the defendant moved the Court to dismiss the indictment against the defendant upon the following grounds and for the following reasons:

As to Count One: That Count One does not state facts sufficient to constitute a crime, in that it does not describe or name the owner, bailee or custodian of the goods;

As to Count Two: That Count Two does not state facts sufficient to constitute a crime, in that it does not allege that the goods in question were, when stolen, in interstate, and in that it does not allege that they were stolen from any railroad car, station house, warehouse, platform, depot, steamboat or vessel of any common carrier; and in that it does not describe or name the owner, bailee, or custodian of the goods sufficiently to identify them;

As to Counts Three, Four, Five and Six: The same grounds and reasons are urged as are urged as to Count Two.

COURT: You are interposing this now in the nature of a motion, a demurrer to the indictment?

MR. MAGUIRE: Yes, your Honor, for the reason that the indictment does not state facts—I could raise that question in the Circuit Court of Appeals; if the indictment does not state facts sufficient to

constitute a crime, it may be raised by motion in arrest of judgment in the Circuit Court of Appeals, or even suggested there for the first time without a motion in arrest of judgment. The sufficiency of the indictment as to a material allegation can be raised at any time in the trial.

COURT: "The evidence shows that these goods were taken, not from the car, but from the depot, the company's warehouse; and it was delivered from the car into this warehouse; so that is covered by the statute."

MR. MAGUIRE: Yes, it is covered by the statute, but it is not covered by 2, 3, 4, 5 and 6 in the indictment.

COURT: I understand this argument does not go to the First Count?

MR. MAGUIRE: This argument does not go to the First Count in the indictment, which I am bringing before your Honor. There is one point which is an exceedingly technical point. To save my client's rights I have placed it in here, but I have not a great deal of confidence in it.

COURT: If these six counts had been tested by demurrer, I should have been inclined to sustain the demurrer, on the ground that there is no direct allegation in the indictment that these goods were stolen, it alleges that the defendant had in his possession these goods, knowing them to have been stolen, but the indictment does not say anywhere

that the goods were stolen while in interstate shipment. There is no direct allegation to that effect. But this question is raised here, after the Government has gone to trial and after the defendant has submitted to the trial, and after the case is ready to go to the jury, and the question here is whether or not this indictment is sufficient to sustain a verdict. That is the question it has to at this time. Then we must look into the indictment to determine whether or not a verdict would be a defense if the defendant were to be again charged and tried. Now, I think a verdict would be a good defense. I think the defendant could well prove former jeopardy, or a former acquittal or a former conviction, as the case might be. In each of these counts the goods are specifically set out, and the verdict must be, if the defendant is convicted, that he had those particular goods in his possession. Such being the case, I see no reason why he could not plead former acquittal or former conviction for an offense charging him again with having had these identical goods in his possession. So I shall over-rule that motion.

I am somewhat in doubt as to whether the Court should instruct the jury that if they find the defendant guilty on the First Count they should then disregard the other five counts; or if they found him guilty on the five counts they should disregard the first. I think, however, that it would be proper to instruct this jury, all of these counts having

grown out of the same transaction, that they may find the defendant guilty or not guilty on each of the charges, and that it will be for the Court, if the defendant is found guilty on more than one of the counts, to administer but one punishment in either event, and that punishment will be a punishment not to exceed the maximum punishment fixed by the statute. I may be wrong about it, but I do not think I am at present."

To which ruling of the Court, the defendant duly asked and was allowed an exception.

EXCEPTION 6.

Thereupon the following proceedings were had:

THE COURT: And with regard to the other question,—I have reference now to the O.-W. R. & N. Railroad being operated by the Government—I do not think that makes any difference in this case, whether it is operated by the O.-W. R. & N. Railroad Company itself, or whether it is operated under lease by the Government. The particular point is that this freight has taken upon itself the characteristic of interstate freight, and that there is enough alleged in the indictment to inform the defendant particularly as to the freight having that characteristic, and that the freight was so carried in interstate commerce over the O.-W. R. & N. Whether it be the O.-W. R. & N. Company or the O.-W. R. & N. Lines, that it was so being carried.

It makes but little difference whether the Government was operating those lines or whether the O.-W. R. & N. Company itself was operating the lines. Hence as to that point, I will overrule the objection heretofore made, and the Court will instruct the jury that it will make no difference as to who was operating the lines at the time."

To which action of the Court in so overruling said motion and in so instructing the jury, the defendant duly asked and was allowed an exception.

EXCEPTION 7.

Whereupon the defendant in due and proper season moved the Court to instruct the jury to find the defendant not guilty as to Count One of the indictment, for the reason that there is a fatal variance between the allegations of the indictment and the proof, in that it appears from the evidence that the goods alleged in the indictment to have been stolen from G. T. car 10457 were not stolen from that car at all, but were removed from that car and placed in the freight shed by employees of the United States Railroad Administration. And it further appears from the evidence that it was not from any railroad car, station house, warehouse, platform, station, depot or freight house in the freight yards of the Oregon-Washington Railroad and Navigation Company, for the reason that it appears from the testimony that the Oregon-Washington Railroad and Navigation Company, at the time the

goods were alleged to have been stolen, was not a common carrier, and that the goods were not being transported over the lines and routes of such company, were not in the custody and control of the company, but were in the freight yards of the United States Railroad Administration, and were transported over the lines and routes of the United States Railroad Administration, and were in the custody and control of the said Railroad Administration.

And also upon the grounds specifically set forth in the motion to dismiss, and that there has been a failure to identify the tubes themselves as a part of the shipment.

And lastly that there is no showing that the case was stolen, and the evidence so far revealed is consistent with the position that the case which is alleged to have been stolen has subsequently been found by the Railroad Administration.

As to Counts 2, 3, 4, 5, and 6, the defendant moved the Court to instruct the jury to find the defendant not guilty upon the several grounds set forth in his motion to dismiss, and for the further ground that the evidence does not support the allegations in the indictment, and that there is no proof of the defendant's guilt thereunder, or under any of them.

The Court denied each, every and all of said requests and to his failure to instruct the jury as requested the defendant asked and was allowed an exception.

EXCEPTION 8.

Whereupon the defendant, in proper time and season, requested the Court to instruct the jury as follows:

I.

If the jury finds from the evidence that the defendant stole, carried away or concealed the goods described in the indictment with intent on his part to convert the same to his own use, and that the goods described in Count One of the Indictment are the same and indentical goods described in Counts Two, Three, Four, Five and Six of the Indictment, then the jury are instructed to acquit the defendant as to Counts Two, Three, Four, Five and Six.

II.

Unless the jury finds from the evidence that the goods described in Counts Two, Three, Four, Five and Six of the indictment are different goods from those described in Count One thereof, then the jury must acquit the defendant as to Counts Two, Three, Four, Five and Six, provided they find from the evidence that the defendant stole the goods described in Count One.

III.

Under the indictment and evidence in this case

the defendant cannot be convicted by the jury of both the crime of stealing the goods and with having them in possession, knowing them to be stolen. If the jury finds from the evidence that the defendant stole the goods, then they must acquit the defendant as to the other counts of the indictment.

IV.

If the jury find from the evidence that the goods were removed from the freight house by the defendant, and that at such time the defendant was the duly authorized agent and representative of the consignee of the goods, then it is the duty of the jury to acquit the defendant.

Whereupon the Court declined, neglected and refused to instruct the jury as so requested, and to the failure, neglect and refusal of the Court to so instruct, the defendant in due and proper time and manner, requested and was allowed an exception as to each of said requested instructions.

Whereupon the Court instructed the jury as follows:

"Gentlemen of the Jury:

This case having been argued to you by counsel, and you having heard the evidence from the witness stand, it becomes the duty of the Court to give you the rules of law which shall govern you in your investigation or inquiry as to whether a crime has been committed by the defendant as charged in the indictment.

The defendant is indicted under an Act of Congress, which was adopted in 1913, and this act provides that: "Whoever shall steal or unlawfully take, carry away, or conceal, or by fraud or deception obtain from any railroad car, station house, platform, depot, steamboat, vessel, or wharf, with intent to convert to his own use any goods or chattels, moving as, or which are a part of or which constitute, an interstate or foreign shipment of freight or express, or shall buy, or receive, or have in his possession any such goods or chattels, knowing them to have been stolen," shall be guilty of an offense.

There are two offenses combined in what I have read to you. One is stealing or taking such goods from a car or depot, etc., and the other is for having such goods in one's possession, the party knowing them to have been stolen from such car or from such freight house, the said goods being a part of an interstate shipment.

Now, Gentlemen of the Jury, the indictment charges that on the 2nd day of October, the defendant Harry Nudelman, did unlawfully and feloniously steal, carry away and conceal, with the intent on the part of him, the defendant, to convert to his own use certain goods and chattels (then those goods and chattels are described) from a railroad car, to-wit, car initialed and numbered G. T. 10457, and then and there, at said time and place, being in the freight yards of the Oregon-Washington Rail-

road and Navigation Company, a common carrier; said goods and chattels above described then and there, and at said time and place, being a part of an interstate shipment of freight, namely, a shipment of freight from Morgan and Wright factory, Detroit, Michigan, over the lines of the O.-W. R. & N. Company and connecting carriers to the City of Portland, Oregon.

That is the first count, Gentlemen of the Jury, and I may make it more compact by simply saying that the defendant is charged with having stolen the goods described in the complaint from this railroad car, and that at the time of the taking of such goods they constituted a part of an interstate shipment, which was being carried by the Oregon-Washington Railroad & Navigation Company from Detroit, Michigan, to Portland.

EXCEPTION 9.

Now, there are five other counts of this indictment. Count 2 charges the defendant with having in his possession certain goods and chattels, and then describes the goods and chattels. Those goods and chattels are a part of the goods and chattels which are described in the first count. And then it is further alleged by that count that those goods and chattels were a part of and constituted an interstate shipment over the lines of the O.-W. R. & N. Company from Detroit to the City of Portland; and it charges the defendant with having those

goods in his possession, knowing at the same time that the goods had been stolen from the railroad company or its freight depot while the goods were a part of an interstate shipment.

To the giving of which last instruction the defendant requested and was allowed an exception.

EXCEPTION 10.

Whereupon the Court further instructed the jury jury as follows:

The third count charges the same thing, but that charge is with reference to another portion of the goods which are described in Count One. And so on with Counts 4, 5 and 6.

To the giving of which last instruction the defendant requested and was allowed an exception.

EXCEPTION 11.

Whereupon the Court further instructed the jury as follows:

"I may say that perhaps the reason why these last counts were so split up was because the goods were found to have been delivered by the defendant, if the testimony so warrants your belief, to different parties, and it came about by the manner in which the goods were handled and disposed of."

To giving which instruction the defendant requested and was allowed an exception.

EXCEPTION 12.

Whereupon the Court instructed the jury as follows:

"It is a rule of law that it is permissible, and the prosecutor may join in one indictment a charge of each offense committed arising out of the same state of facts or series of acts. To make the matter plain, it is often the case that several offenses against the Government may be committed through the doing of the same acts or series of acts, and the Government may indict for all the offenses committed, but each offense must be charged by a separate count, and be separately stated. The principle is well illustrated by the present statute. That statute makes it an offense to steal, take and carry away goods and chattels while in the process of interstate transportation. The same statute makes it also an offense for one to have such goods in his possession, knowing them to have been stolen. As a person cannot steal and carry away the goods without having them in his possession, with knowledge of the theft, he may be guilty of both offenses, they arising out of the same series of acts. Now, it was proper for the Government to indict for both offenses, but the charge for each offense must be by a separate count, and that is what has been done here. While, if the evidence warrants, the defend-

ant may be convicted on two or more of these counts, including the first, but one punishment can be meted out, and that is for the Court and not for the jury. So that while a defendant charged with several offenses arising out of the same acts or series of acts may be convicted of more than one of such offenses, he can only receive one punishment, which will discharge him of all the offenses."

To the giving of which said instruction the defendant asked and was allowed an exception.

EXCEPTION 13.

Whereupon the Court instructed the jury as follows:

"You may convict upon one or more, or all the counts, or acquit upon one or more, or all the counts. For instance, if you ascertain a reasonable doubt as to whether the defendant stole the property described in Count One, and are convinced that he had the part of such goods described in Count 2, knowing them to have been stolen while in interstate shipment, you should acquit on the first count and convict on the second, or vice versa, if the evidence so convinces you beyond a reasonable doubt. And in this way all the counts will be considered."

To the giving of which said instruction the defendant asked and was allowed an exception.

Whereupon the Court further instructed the jury as follows:

"The defendant in this case has interposed a plea of not guilty to this indictment. That plea puts in issue all the material allegations of the indictment, and of each count thereof, and it imposes upon the Government the burden of establishing, to your minds beyond a reasonable doubt each and every of such allegations, or each and every ingredient which enters into the offense.

"A person charged with an offense or crime in this country is presumed to be innocent until he has been proven guilty beyond a reasonable doubt, and this presumption abides with the defendant throughout the trial, and until the evidence which has been introduced before you has convinced you beyond a reasonable doubt of the guilt of the defendant."

EXCEPTION 14.

Whereupon the Court further instructed the jury as follows:

"Now, as to the ingredient of this offense, I can state them to you in a brief way. It consists, in the first place, of stealing, taking away, or carrying away, the property which it is charged the defendant did steal and take and carry away. And further, the property so carried away, must have been taken and carried with the intent on the part of the person taking it to convert the same to his own use. And, second, the party taking the goods must

have taken the identical goods which are charged in the indictment. He may have taken part of them, or he may have taken all, but he must have taken some or all of the goods charged in the indictment. He cannot be convicted of taking any other goods than that that was mentioned in the indictment. And he must have taken these goods from a car, or from a warehouse or freight house of the company which has charge of the goods while in transportation, and the goods must have been a part of an interstate shipment.

"Goods become a shipment for transportation when they are delivered at a warehouse or freight-house, and are taken into the possession of the company, and then they continue to be a part of an interstate shipment or of the shipment, while they are being transported from the place where delivered to the place where they are to be turned over to the consignee. They continue to be a shipment until the goods have been delivered to the consignee. They remain in transit yet while the goods are in the warehouse or in the freight house of the shipping company."

To the giving of which instruction the defendant requested and was allowed an exception.

Whereupon the Court further instructed the jury as follows:

"What we mean by interstate shipment is goods

that are shipped through one state into another or from one state into another. It would not answer the purpose if goods were shipped from one point in a state to another point in the same state, because that is not interstate shipment. It is intrastate and not interstate.

"So that all these things must concur in order that the defendant may be found guilty, as charged in the first count."

EXCEPTION 15.

Whereupon the Court further instructed the jury as follows:

"As to the second count, the ingredient count is that the defendant must have the goods in his possession, and he must know at the time that the goods had been stolen, and he must know that they were stolen while the goods were in interstate shipment, or being carried from one state into another. And the same rules for determining whether or not the shipment is interstate will apply as I have explained to you formerly."

To the giving of which instruction the defendant requested and was allowed an exception.

EXCEPTION 16.

Whereupon the Court further instructed the jury as follows:

"Now, there is some question made here as to whether the indictment is sufficient in charging that these goods were taken from car No. 10457. The evidence tends to show that the railroad company itself had taken the goods out of the car and placed them in its freight warehouse, ready for delivery to the consignee. I instruct you, gentlemen of the jury, that it makes no difference whether the goods were in the car at the time they were taken, if they were taken by the defendant, or whether they were in the freight warehouse and not yet delivered to the consignee."

To the giving of which instruction the defendant requested and was allowed an exception.

EXCEPTION 17.

Whereupon the Court further advised the jury as follows:

"Another question has been made here, and that is with reference to whether the Oregon-Washington Railroad and Navigation Company was in the operation of its roads while these goods were being transported. The fact is that the Government was at that time in the operation of such railroad lines. It had prior to that time, under the authority of a law of Congress, taken over this line, with a great many others, and was operating the lines for the purposes of the Government. But I instruct you that it makes no difference in this case whether this

railroad was being operated by the corporation of the Oregon-Washington Railroad & Navigation Company itself, or was being operated by the Government. The material thing in the case is, were these goods being transported at the time from the warehouse before delivery to the consignee, then the defendant would be liable if he stole them, if he took them surreptitiously from such warehouse."

To the giving of which said instruction the defendant duly requested and was allowed an exception.

EXCEPTION 18.

Thereupon the Court further instructed the jury as follows:

"Now, it is claimed on the part of the defendant that he had authority from the United States Rubber Company, which was the consignee of these goods, to obtain the goods from the railroad company and to deliver them at the store of the United States Rubber Company. And in that connection I will say to you that, if the defendant had the authority from the Rubber Company to procure these goods, then it would be, of course, regular for him to go to the warehouse of the company and take the goods in behalf of the Rubber Company, and deliver them to the Rubber Company; but he would have no right to take the goods contrary to the rules of the railroad company. He would have no

right or authority by reason of his agency of the Rubber Company, to take these goods away without the consent of the railroad; and much less would he have any right or authority to steal or carry away the goods surreptitiously, and thereby with intent to convert them to his own use."

To the giving of which said instruction the defendant duly and properly requested and was allowed an exception.

EXCEPTION 19.

Whereupon the Court instructed the jury as follows:

"If the jury find from the evidence that the goods were removed from the freight house by the defendant, and were not removed surreptitiously and clandestinely or stealthily, and that at such time the defendant was the duly authorized agent and representative of the consignee of the goods, then it would be the duty of the jury to acquit."

To the giving of which instruction the defendant duly requested and was allowed an exception.

EXCEPTION 20.

Whereupon the Court further instructed the jury as follows:

"I instruct you that if you believe from the evi-

dence that the defendant, Harry Nudelman, took the case of rubber tubes described in the indictment from the warehouse referred to in the evidence he must have taken them in one of two ways: either as a theft, or as the agent and expressman of the United States Rubber Company. If you believe that he took them as an expressman under his general authority from the United States Rubber Company to receive freight consigned to it, and not surreptitiously, clandestinely, or stealthily, and that thereafter he formed an intent to convert the case to his own use, then I instruct you that you cannot find him guilty under the First Count of the indictment for stealing the case, because the offense would not be one against the laws of the United States."

To which instruction of the Court the defendant requested and was allowed an exception.

Whereupon the following proceedings were had: The Court further instructed the jury as follows:

"Now, gentlemen, I have said to you that the burden of proving this case was cast upon the United States Government, and that that burden required the Government to prove to your satisfaction that the crime had been committed beyond a reasonable doubt, and I will explain to you what is meant by a reasonable doubt. It is a little hard to define it; but it is not every captious, whimsical doubt, or every doubt that a person might raise for

the purpose of getting rid of a subject. It is a thing of substance. It is such a doubt that in the consideration of this case as you pass along the line, as the testimony has been offered here before you, at some point would cause you to hesitate and to be doubtful whether or not the truth shows the defendant guilty. In other words, you must be satisfied to a moral certainty, taking into consideration all the evidence in the case, both pro and con, that the defendant did commit the crime or the offense charged in this indictment. You, gentlemen of the jury, are judges of the effect of the testimony. The Court gives you the law, and you take the law from the Court implicitly and apply it; but when it comes to ascertaining and determining what the testimony proves in the case, that is a function which the law devolves upon you alone, and you must determine that for yourselves.

A witness is presumed to speak the truth, but that presumption may be overcome by the manner in which he testifies and by the character of his testimony, or by testimony which may go to his motives, or by contradictory evidence.

A person found to be incorrect in one particular may be distrusted in all. And you may take into consideration furthermore the defendant (witness) may have in the case and the testimony that he gives and determine from all that what the credibility of the witness is. And having determined the

credibility of the witnesses, you may then determine upon the whole what your verdict shall be in this case, as to whether the defendant is innocent or guilty.

"The defendant himself has not taken the witness stand. That is a right of his; he might have taken the witness stand if he desired, or he might refrain from going upon the witness stand; but the rule of law is, and the statute so prescribes that where a person does not go upon the witness stand, the jury shall not take that incident or fact as a fact against him in the trial, and that the case must be determined wholly upon the evidence as before you without drawing any inference from the fact that the defendant himself did not go upon the witness stand. What the Court may have said during any time during the continuance of this trial from which you might infer that the Court had an opinion or judgment as to the facts proven, you will disregard, because that is a function of yours and not the Court's."

And the foregoing instructions are all of the instructions given by the Court to the jury at said trial.

Whereupon the jury duly retired to consider their verdict and thereafter returned a verdict into court finding the defendant guilty as charged in the indictment as to Counts one, two, three, four, five and six, which said verdict was duly filed.

Thereafter the defendant moved the Court as follows:

"Comes now the defendant in the above entitled cause by R. C. Nelson and Winter & Maguire, his attorneys, and moves the Court for a new trial therein, upon the following grounds and for the following reasons:

As to the Verdict of Count One of the Indictment:

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

As to the Verdict Upon Count Two of the Indictment.

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

As to the Verdict Upon Count Three of the Indictment.

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

As to the Verdict Upon Count Four of the Indictment:

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

As to the Verdict Upon Count Five of the Indictment:

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

As to the Verdict Upon Count Six of the Indictment:

(a) That the evidence was insufficient to justify the verdict.

(b) That the verdict is against and contrary to the evidence.

(c) That the verdict is contrary to law.

(d) That the Court committed error in the trial on said cause, to which error the defendant duly excepted.

Thereafter the Court heard the arguments of counsel upon said motion and overruled the same, to which action of the Court the defendant, Harry Nudelman, was duly allowed an exception.

Thereafter the defendant, Harry Nudelman, moved the Court for an arrest of judgment as follows:

Comes now the defendant by R. C. Nelson and Winter & Maguire, his attorneys, and moves the Court for an order arresting the judgment in the foregoing cause, upon the following grounds and for the following reasons:

As to Count One of the Indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

As to Count Two of the Indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

As to Count Three of the Indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

As to Count Four of the Indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

As to Count Five of the Indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

As to Count Six of the indictment:

(a) That Count One of the indictment does not state facts sufficient to constitute a crime.

(b) That it appears affirmatively of records that there is a fatal variance in the proofs between the allegations of the indictment and the evidence.

Thereafter, the Court entered a judgment of conviction and sentenced the defendant, Harry Nudelman to confinement in the U. S. Penitentiary at McNeill's Island, Washington, for a period of thirteen months.

And it is certified that the foregoing is all of the testimony, evidence, records and exceptions in said cause material to the exceptions herein noted.

And thereafter and within the time allowed by the Court the defendant, Harry Nudelman presented this his bill of exceptions, which is hereby allowed.

CHAS. E. WOLVERTON,
Judge.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Bill of Exceptions accepted this 3rd day of November, 1919.

JOHN C. VEATCH,
Assistant United States Attorney.

[Endorsed]: United States District Court, District of Oregon. Filed Nov. 3, 1919. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

Stipulation as to Record.

It is hereby stipulated by and between the United States of America, by John C. Veatch, Assistant United States Attorney for the District of Oregon, and Harry Nudelman, the defendant, by Roscoe C. Nelson and John Manning, his attorneys, that the following documents, papers and records in the case of the United States of America vs. Harry Nudelman shall be included in the transcript of record in the said cause, and that the same are all the necessary documents, papers and records to be con-

sidered in reviewing the said case on writ of error, to-wit:

Indictment,
Bill of Exceptions,
Assignments of Error,
Petition for Writ of Error.
Order Allowing Writ of Error,
Citation,
Writ of Error,
Arraignment of Plea.
Impaneling of Jury,
Verdict,
Judgment,
Bond.

It is further hereby stipulated between the respective parties hereto that the foregoing printed record now tendered to the Clerk of the above entitled Court for his certificate, and filed in the above cause, is a true transcript of the record in said cause, and that the said Clerk may certify said transcript to the United States Circuit Court of Appeals for the Ninth Circuit, without comparing the same with the original record which is on file herein.

Dated this 13th day of December, 1919.

JOHN C. VEATCH,
Attorney for Plaintiff.
ROSCOE C. NELSON,
JOHN MANNING,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 13, 1919. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARRY NUDELMAN,
Defendant.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed transcript of record on writ of error in the case of Harry Nudelman, plaintiff in error, vs. United States of America, defendant in error, is a true transcript of the record in said cause in said Court. This certificate is made without comparing the said transcript of record with the original record in said cause, pursuant to the stipulation of the parties therein that this record may be certified to by me to be a true copy, without comparison.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court at Portland in said District this —— day of December, 1919.

Clerk.